

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 18334 of 2004(G)

PETITIONER:

**V.GANESH BHAT,
PARTNER, SOUTH INDIA OIL STORES, TIRUR,
MALAPPURAM DISTRICT.**

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.**
- 2. THE DISTRICT SUPPLY OFFICER,
MALAPPURAM.**
- 3. THE TALUK SUPPLY OFFICER,
TIRUR, MALAPPURAM DISTRICT.**

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.18334/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTICE DT. 17.5.04 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P2:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DT. 16.12.03 IN WA.1424/99.

RESPONDENTS EXHIBITS

EXT.R1:- COPY OF THE JUDGMENT IN W.A. NO.2580/98 DT. 7.1.99 AGAINST OP. NO.2518/93.

EXT.R2:- COPY OF THE GAZETTE NOTIFICATION GO(P) NO.18/88/F&CS DT. 12.9.88.

EXT.R3:- COPY OF THE LETTER NO.8045/D3/93 F&CS DT. 22.11.93 OF THE SECRETARY TO GOVERNMENT.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.18334 OF 2004-G

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Dated this the 11th day of July, 2007.

JUDGMENT

Petitioner is a wholesale agent of the Indian Oil Corporation to deal with kerosene under the Kerala Kerosene Control Order, 1968, the "Control Order", for short. The Government fixes the quota and the District Collector fixes the price. Clause 8A of the Control Order, in its first proviso, enjoins that whenever the issue price of kerosene is revised upward, the differential cost worked out on the basis stated therein shall be payable by the wholesale dealer to the Government. That provision is not under challenge. Clause 8A was introduced into the Control Order by S.R.O.No.1083/88 dated 12-9-1988 published in the Gazette dated 4-10-1988. Therefore, after 4-10-1988, the

Government is entitled to insist on such remittance by the wholesale dealers.

2. In support of this writ petition challenging Ext.P1 demand notice for such differential, the decision of the Division Bench of this Court in **Taluk Supply Officer v. Parakkottil Brothers** [1991 (2) KLT 901] followed in Ext.P2 judgment in W.A.1424/1999 is pressed into service. As rightly noticed in the said judgments, the petitioner is not an agent of the Government. Therefore, in the absence of an authorizing rule, there could not be any demand by the Government for payment of such differential to it. While it is not discernible from Ext.P2 as to the period for which Ext.P1 in that case was issued, it is clear from a reading of the judgment in Parakkottil Brothers (supra) that the Division Bench was dealing with a pre-1988 situation in that case. The judgment of the Division Bench in W.A.398/2006 was issued following Ext.P2 judgment on the ground that that has not been distinguished in the course of arguments.

However, the decision of the Division Bench in W.A.2580/1998 (Ext.R1) produced along with the counter affidavit clearly lays down that Clause 8A of the Control Order enables the Government to take action against the wholesale dealers on and after the date on which that clause came into force. Therefore, the case in hand is squarely covered by the ratio in Ext.R1 judgment. In W.A.216/2003 this Court referred to Parakkottil Brothers (supra) and noticed that Clause 8A was introduced probably to get over that decision of the Division Bench. The scheme of arrangement between the Government and the petitioner is governed by the Control Order and therefore, in terms of that judgment also, Ext.P1 stands.

For the aforesaid reasons, this writ petition fails. The same is accordingly dismissed. No costs.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-